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JUN 20 1966
JOHN F. DAVIS, CLERK

No. 267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

JOHN CALCATERRA,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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UNITED STATES LAW PRINTING CO., CHICAGO 12, ILL. LA review 5-6581

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JURISDICTIONAL STATEMENT

The Appellant, John Calcaterra, appeals from the judgment of the Supreme Court of Illinois entered on November 19, 1965, affirming a judgment of conviction of the crime of selling a non-narcotic substance under the representation that it was a narcotic of the Circuit Court of Williamson County, Illinois, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Supreme Court of Illinois is reported in 33 Ill. 2d 541, 213 N.E. 2d, 270. A copy of said opinion is attached hereto as Appendix A.

Jurisdiction

This action was commenced by an indictment returned by the Grand Jury of Williamson County, Illinois, charging that the Appellant "unlawfully, feloniously, wilfully and knowingly offered to sell a certain narcotic drug, to-wit: Cannabis Sativa L. (commonly known as marijuana), to Donald Young for lawful money of the United States of America, otherwise than as authorized in the Uniform Drug Act, of said State of Illinois, then in force and effect, and then unlawfully, feloniously, wilfully and knowingly sold to said Donald Young, a certain non-narcotic substance." The statute upon which the indictment was founded is Section 38 of AN ACT defining and relating to narcotics and other dangerous drugs, to make uniform the law with reference thereto and to repeal certain acts therein named. Approved July 11, 1957. L. 1957, p. 2569 as amended. (Ill.Rev.Stat., 1965, Ch. 38, sec. 22—40) The judgment of the Supreme Court of Illinois was entered on November 19, 1965, and a timely petition for rehearing was denied on January 24, 1966. The notice of appeal was filed in the Supreme Court of Illinois on April 21, 1966. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Lochner* v. *New York,* 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937; *Coppage* v. *Kansas,* 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441; *Adkins* v. *Children's Hospital,* 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed 785; *Jay Burns Baking Co.* v. *Bryan,* 264 U.S. 504, 44 S.Ct. 412, 68 L.Ed. 813.

Question Presented

Whether the statute under which the appellant was convicted which makes criminal the selling of a non-narcotic substance after offering, or arranging, or negotiating to have any narcotic drug sold is an improper exercise of the police power and contrary to the due process clause of the XIVth Amendment to the Constitution of the United States.

Statute Involved

Illinois Revised Statutes, 1965, ch. 38, §22—40:

* * *

Whoever agrees, consents or in any manner offers to unlawfully sell, prescribe, administer, transport, dispense or give any narcotic drugs to any person, or offers, arranges, or negotiates to have any narcotic drugs unlawfully sold, prescribed, administered, transported, dispensed

* * * *

or given, and then sells, prescribes, administers, transports, dispenses or gives, or offers, arranges or negotiates to have sold, delivered, transported, furnished, administered, dispensed or given to any person any non-narcotic liquid, substance or material shall be imprisoned in the penitentiary for any term from 1 year to 10 years.

Statement

The following excerpt from the Supreme Court of Illinois is, we believe, a most adequate statement of the case:

> A jury in the circuit court of Williamson County found defendant, John Calcaterra, guilty of selling a non-narcotic substance under the representation that it was a narcotic, in violation of section 38 of the Uniform Narcotic Drug Act. (Ill. Rev. Stat. 1961, chap. 38, par. 22—40.) He was sentenced to the penitentiary for a term of three to ten years. A constitutional question gives us jurisdiction.